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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

JUAN PEDRO GUEVARA,

Defendant and Appellant.

A132085

(Humboldt County
Super. Ct. No. CR1000842A)

Juan Pedro Guevara was convicted of multiple charges arising out of an attack on Robert Alder. He contends the court erred when it did not sua sponte instruct the jury on the unanimity requirement with respect to assault by means of force likely to cause great bodily injury and battery causing serious bodily injury. We conclude there was no error and affirm the judgment.

BACKGROUND

Defendant and Alder have known each other for years. In December 2009 Alder was in jail on a felony probation violation. In early February 2010 he provided information to a Humboldt County District Attorney's investigator about a Rodney Donahue's involvement in a murder. In exchange, he was released from jail around February 3, 2010, and reinstated on probation.

Alder and his girlfriend, Jasmine Sankoff, lived in a motor home on Lisa Day's property. While Alder was in jail, defendant told Sankoff that Alder had talked to police about Donahue's involvement and that Day possessed "paperwork" to prove it, meaning that she had documentation showing someone cooperated with police. Day showed

Sankoff the paperwork. It was a summary of Alder's police statement. She also showed it to Alder after his release. Cooperation with police is "highly frowned upon" in the criminal culture, and, if discovered, "snitches" or "rats" are subject to threats, intimidation, violence, and sometimes death.

On February 9, 2010, Alder and defendant had two interactions, the second of which resulted in the charges in this case. Defendant's stepsons, Casey Reddick and Clifton Stanbridge, were present at both. They first met in a parking lot. Alder testified that defendant yelled that Alder was a rat and that defendant had paperwork on him. Alder denied the accusation. Defendant responded that they would "have to handle it," meaning they were going to fight. Stanbridge and another defense witness testified it was Alder who called defendant a rat or snitch, not the other way around. A fight ensued, but broke up after someone said the police had been called.

Later that day, defendant, Stanbridge and Reddick paid a call on Alder's trailer. Sankoff testified that defendant looked angry and was yelling for Day. She told Alder that defendant was there, then went outside and told the men that Day no longer lived there. Defendant asked where Alder was and yelled for him to come outside and "finish this."

Alder testified that defendant said they had business to finish and threatened that he would burn Alder out of his trailer unless he came outside. Alder stepped outside and defendant advanced. Alder reached back into the trailer to retrieve an 18-inch "novelty" bat, but defendant slammed his arm in the door as he attempted to withdraw it. Alder freed his arm, but he could not remember at trial whether he swung the bat. Defendant, Stanbridge and Reddick pushed him to the ground and kicked and beat him. Alder rolled over to protect his chest and face. Eventually he lost consciousness. When he came to, defendant was standing over him holding a knife to his throat. Defendant told Alder he had 24 hours to get off the reservation.

Sankoff gave similar testimony. At some point during the beating she saw defendant with a broken handle from a shovel. The shovel, which had been leaning against the trailer door, was not broken before the fight. Defendant straddled Alder's legs

and swung the handle at him, while Reddick kicked and punched him. Reddick yelled “that’s what happens to rats.” Defendant told Sankoff that Donahue was “angry about the paperwork and wanted something done about it.” As Alder regained consciousness, defendant held a knife to his throat and said “Go ahead and call the cops. See what happens. Call the cops,” or “see what happens if you call the police.” The whole course of events lasted “maybe five minutes, ten minutes.”

Stanbridge testified that he, his mother Lajeane Stanbridge (defendant’s wife), Reddick, and defendant walked to Day’s property to talk to her. They were speaking with Sankoff when Alder came out of the trailer with a two-foot long wooden bat and swung at defendant. Stanbridge tackled Alder to the ground to disarm him and hit him four times as they scuffled. When he saw blood, he left with the others. Nobody hit Alder with a shovel. Stanbridge did not see defendant strike Alder or hold a knife.

Defendant was arrested and interviewed by police that day. A transcript of the interview was admitted at trial. He initially denied any involvement in the attack, but later said that he went to talk to Alder about why Alder called him a rat. “He come and—I come over there to find out what was going on, all right. He swung at me with a baseball bat—what was I supposed to do? I took the bat away—we started—I pushed him down and that was it.” Defendant said he hit Alder just once, and that Alder’s multiple injuries were caused when he fell onto a motor that was lying on the ground.

A jury found defendant guilty of assault by means likely to produce great bodily injury (count 1), enhanced due to the personal infliction of great bodily injury; threatening a witness (count 2); assault (count 3); making a criminal threat (count 4); battery with serious bodily injury (count 5); and misdemeanor battery (count 6). The court found true special allegations that defendant had suffered two prior serious or violent felony convictions and had served four prior prison terms. Defendant was sentenced to 25 years to life, plus an additional seven years for the enhancement and prior prison terms. The court imposed and stayed three additional 25-years-to-life terms. This appeal timely followed.

DISCUSSION

Defendant asserts the court erred because it failed to instruct the jurors they must agree on the specific acts that constituted assault with force likely to cause great bodily injury and battery causing serious bodily injury. We disagree.

A criminal defendant has a constitutional right to a unanimous jury verdict. (Cal. Const., art. I, § 16.) Where the evidence shows that more than one offense occurred, the court must instruct the jury that it must unanimously agree on at least one of the offenses involved in order to convict. (*People v. Madden* (1981) 116 Cal.App.3d 212, 219.) The danger in failing to give a unanimity instruction in such cases is that the jury might return a conviction even though not all the jurors are convinced beyond a reasonable doubt that the defendant committed the same criminal act. (*People v. Gunn* (1987) 197 Cal.App.3d 408, 412; *People v. Epps* (1981) 122 Cal.App.3d 691, 701-703.) But this requirement does not govern “ ‘if the case falls within the continuous course of conduct exception,’ ” as “ ‘when the acts are so closely connected that they form part of one and the same transaction, and thus one offense.’ ”¹ (*People v. Avina* (1993) 14 Cal.App.4th 1303, 1309.) “The ‘continuous conduct’ rule applies when the defendant offers essentially the same defense to each of the acts, and there is no reasonable basis for the jury to distinguish between them.” (*People v. Stankewitz* (1990) 51 Cal.3d 72, 100.)

Here, all of the acts that supported counts one and five were part of one short-lived, continuous assault. Sankoff’s testimony on this point was uncontradicted. “[I]t happened so quickly and they—they—they had—they were on him so fast, he really didn’t have a chance to—to defend himself. . . . Once they had him on the ground, there was nothing he could do.” The whole episode was over in a matter of minutes. This can only be reasonably characterized as constituting a single transaction.

¹ The exception also arises when the criminal statute “ ‘contemplates a continuous course of conduct of a series of acts over a period of time.’ ” (*People v. Avina, supra*, 14 Cal.App.4th at p. 1309.) Only the single transaction facet of the continuous course of conduct exception applies here.

People v. Jefferson (1954) 123 Cal.App.2d 219, 220-221 is instructive. Police officers responded to a domestic violence call. Over the course of 10 to 15 minutes the defendant slashed at a group of officers with a butcher's knife while standing outside her house; moved inside and set the knife down; then retrieved a second knife from her purse and slashed at the officers again. The *Jefferson* court rejected the defendant's argument that this constituted two offenses that triggered the unanimity requirement because both slashing episodes "occurred in the course of a continuous effort on the part of the officers to disarm the appellant. They were a part of the same incident, and they could not reasonably be held to constitute two separate offenses." (*Id.* at p. 221.) This was so, the court held, despite the defendant's claim that the initial slashing was in self-defense. (*Ibid.*) Here, the various blows that comprised the attack on Alder were no less one continuous course of conduct.

Defendant disagrees. He contends the continuous conduct rule is inapplicable because the jurors could have distinguished between his initial punch and the subsequent blows with the shovel handle. He posits that some might have believed he landed the first punch, but not the subsequent blows, in self-defense, or rejected his self-defense claim as to the initial punch but disbelieved that he also beat Alder with the shovel handle. Alternatively, he suggests, some jurors might not have believed he landed any of the blows, but believed him to be guilty because he was part of a group beating.

The potential distinctions proffered by defendant do not call for a unanimity instruction because, as we have explained, the beating occurred within a continuous course of conduct. No witness contradicted Sankoff's estimate that the whole thing was over within minutes, and none described any break in the action. While defendant asserted self-defense, he raised no distinction between the first and subsequent blows and no suggestion that the jury should view them differently. (See *People v. Stankewitz*, *supra*, 51 Cal.3d at p. 100 [continuous conduct exception applies if the defendant tenders the same defense or defenses to each act and if there is no reasonable basis for the jury to distinguish between them].)

Assuming *arguendo* that a unanimity instruction would have been appropriate, no prejudice could have resulted from the court's failure to provide it. The verdicts establish that the jury rejected defendant's claim of self-defense. While some jurors might conceivably have believed his initial blow was in self-defense while other jurors rejected that premise, the point is immaterial. In order to convict defendant, any juror who accepted the claim of self-defense as to the first blow must necessarily have found that defendant thereafter continued to beat Alder as he lay prone. There is no reasonable basis to conclude that any juror who rejected the self-defense claim based the verdict on a theory that defendant wielded only the first punch and then withdrew. To reach that conclusion, the juror would have to believe defendant's statement to police that he hit Alder only one time, while at the same time rejecting his claim that he did so in self-defense. "Where the record indicates the jury resolved the basic credibility dispute against the defendant and therefore would have convicted him of any of the various offenses shown by the evidence, the failure to give the unanimity instruction is harmless." (*People v. Thompson* (1995) 36 Cal.App.4th 843, 853.) This is such a case. Under any standard (see *People v. Milosavljevic* (2010) 183 Cal.App.4th 640, 647 [split of authority on standard of prejudicial error]), no prejudice could have resulted from the omission of a unanimity instruction in this case.

DISPOSITION

The judgment is affirmed.

Siggins, J.

We concur:

McGuiness, P.J.

Jenkins, J.